



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.326/LKW/2014
Assessment Year: 2009-10

Gagan Rajpoot 893, Khawaspura Faizabad	v.	The ITO-I Faizabad
TAN/PAN:AGUPR7030R		
(Appellant)		(Respondent)

Appellant by:	Shri Shailendra Mishra, Advocate		
Respondent by:	Shri Harish Gidwani, D.R.		
Date of hearing:	10	03	2022
Date of pronouncement:	28	03	2022

ORDER

PER A.D. JAIN, V.P.:

This is assessee's appeal for assessment year 2009-10 against the order of the Id. CIT(A)-I, Lucknow, dated 29.1.2014, taking the following grounds:-

1. That the Id. Commissioner of Income-tax (Appeals) has erred in law as well as on facts in upholding the initiation of proceedings u/s 147 of the I.T. Act, 1961, which was based by A.O. on presumption and suspicion.
2. That the Ld. Commissioner of Income-tax (Appeals) has, erred in law as well as on facts in sustaining the addition to the extent of Rs.8,22,500/- in respect of cash deposited in Saving bank account jointly held with the father of the assessee as unexplained, failing thereby to judiciously appreciate the facts and circumstances as

explained in the written submission filed before the Id. CIT(A).

3. That the Id. Commissioner of Income-tax (Appeals) has erred in law as well as on facts in upholding the A.O.'s finding that theory of marriage of sister on 22.7.2008 is concocted story, in spite of relevant documentary evidence adduced by the assessee-appellant before the A.O. as well as Id. CIT(A).

2. The assessee has also raised an additional ground, which reads as under:

“Ground of appeal No. I A.

That without prejudice to the ground of appeal No. 1, it is submitted that the Assessing Officer has erred in law in failing to dispose of the objection raised by the assessee against reassessment proceedings, by speaking order in contravention of the law laid by the Apex Court in GKN Driveshafts (India) Ltd. Vs. ITO and the assessment order is void-ab-initio ”.

3. The Additional Ground raises a legal issue going to the root of the matter, not requiring any fresh material to be gone into. Accordingly, it was admitted.

4. The Id. Counsel for the assessee has pointed out, referring to pages 9 & 10 of the paper book, that a letter dated 7.6.2012 was filed before the Assessing Officer, wherein, specific objections against the reasons recorded had been raised; and that however, in violation of ‘GKN Driveshafts Pvt. Ltd. vs. ITO and Others’, 259 ITR 19 (SC), the Assessing Officer not only failed to decide the objections raised by the assessee by a separate speaking order before entering upon the assessment proceedings, he did not pass any order on the objections at all,

which is not as per the law laid down in 'GKN Driveshafts Pvt. Ltd. vs. ITO and Others' (supra).

5. The assessment records of this case were called for. They have been examined and as stated by the ld. D.R. on perusal of the record, the assessee had filed a letter dated 7.6.2012 raising specific objections against the reasons recorded by the Assessing Officer; and that however, the Assessing Officer did not pass any order disposing of the objections raised by the assessee.

6. The ld. D.R., however, has placed reliance on the order of the Assessing Officer.

7. Heard. A perusal of the aforesaid letter/reply dated 7.6.2012 [APB: 9 & 10] shows that therein, the assessee has dealt with the questions raised by the Assessing Officer, and has specifically raised objections against the reasons recorded by the Assessing Officer for formation of belief of escapement of income. The following relevant portion of the letter evinces so:

"Sub: - Gagan Rajpoot, 893, Khawaspura, Faizabad - PAN: AGUPR703OF -Assessment Year 2009-10 - Proceedings u/s 147 - Explanation Regarding - Submission of -

Kindly refer to the captioned case. In this context the submission of the assessee are as follows:-

1. That the section 147 of the I.T. Act,1961 has been erroneously invoked since there was no reason to believe that any income chargeable to tax has escaped assessment and the assessment proceedings may therefore very kindly be dropped.

2. Without prejudice to the averment in aforesaid para 1, the assessee most respectfully submits as follows:-

a) That the saving bank account no. 715201011000051 with Vijaya Bank, Faizabad is a joint account having Late Sita Ram Rajpoot father of the assessee as joint holder thereof.

b) That the balance B/F as on 01-04-2008 is Rs.4,53,280/- and the balance C/F as on 31-03-2009 is Rs.67,833/- which show that the withdrawals exceeds the deposits by Rs.3,85,447/- and the net investment is a negative figure which does not any addition.

c) That in addition to the assessee the following members of the family (assessed to tax separately at Faizabad, for the many years) who have been using the aforementioned Saving Bank Account, through joint holder Shri Sita Ram Rajpoot (who died on 18-10-2011, Death Certificate dated 16-11-2011 enclosed as annexure 'A') , since they had no other bank account in their individual capacity:-

Sl. No.	PAN	NAME	RELATION SHIP WITH ASSESSEE	A.Y.	INCOME SHOWN (Rs.)
1.	AGHPR3209F	SITA RAM RAJPOOT	FATHER	2009-10	1,11,430
2.	AGHPR3208E	PRAMILA RAJPOOT	MOTHER	2009-10	97,500
3.	ALEPR2452C	AKASH RAJPOOT	BROTHER	2009-10	1,26,200

d) That the assessee and the persons mentioned in para above do not maintained any books of account

e) That after demise of Sita Ram Rajpoot (at the age of 51years), the assessee was shocked and still on bed due to paralysis.

3. In view of the fact mentioned above the deposits and corresponding withdrawals made in the aforesaid bank account may very kindly be treated as explained.”

8. In ‘GKN Driveshafts Pvt. Ltd. vs. ITO and Others’ (supra) (relied on by the ld. A.R. of the assessee), on receipt of the reasons recorded by the Assessing Officer for forming a belief of

escapement of income, the noticee is entitled to file objections to the issuance of the notice for re-assessment, which objections the Assessing Officer is bound to dispose of by passing a separate speaking order before proceeding with the assessment.

9. No decision contrary to “GKN Driveshafts” (supra), has been cited before this Bench.

10. Therefore, the grievance of the assessee by way of Additional Ground no.1A raised before this Bench, is justified. It is accepted. Respectfully following “GKN Driveshafts” (supra), the reasons recorded and the re-assessment notice dated 13.2.2012 are quashed. Accordingly, the assessment order passed by the Assessing Officer is reversed as null and void in the absence of a separate specific order disposing of the assessee’s objections against the reasons recorded.

11. Nothing further hence survives for adjudication and as such, the other Grounds raised by the assessee are not required to be gone into, nor was anything else argued before us.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 28/03/2022.

Sd/-
[T. S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[A. D. JAIN]
VICE PRESIDENT

DATED:28/03/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR